

HON. THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RYAN DIAZ,

Plaintiff,

v.

NINTENDO OF AMERICA, INC.,

Defendant.

NO. 2:19-cv-01116-TSZ

**REPLY IN SUPPORT OF MOTION  
TO APPOINT INTERIM CO-LEAD  
COUNSEL**

**NOTE ON MOTION CALENDAR:  
September 6, 2019**

Nintendo has confirmed that it “takes no position” with respect to Plaintiff’s Motion to Appoint Interim Co-Lead Counsel. *See* ECF No. 18. It thus, necessarily, does not contest the qualifications of proposed interim co-lead counsel to serve in that capacity pursuant to Fed. R. Civ. P. 23(g), nor does it take the position that it is procedurally premature for the Court to grant this relief now. Instead, it states that it intends to file a motion to compel arbitration with respect to Mr. Diaz (and presumably the other Plaintiffs who will be named on the forthcoming amended complaint), which, it says, will “moot the need to appoint counsel.” *Id.*

Setting aside that Plaintiff intends to vigorously oppose any motion to compel arbitration that may be filed, Nintendo’s response provides no reason to deny the motion presently before the Court. In one of the cases cited in Plaintiff’s opening brief, the district

1 court granted a motion for the appointment of interim co-lead counsel—that time over the  
 2 objection of the defendant—in a consumer case where there was an arbitration clause. *Beture v.*  
 3 *Samsung Elecs. Am., Inc.*, Civil Action No. 17-5757 (SRC), 2018 U.S. Dist. LEXIS 50413  
 4 (D.N.J. Mar. 27, 2018). Thereafter, the defendant’s motion to compel was granted, and the case  
 5 was sent to arbitration. *See Beture v. Samsung Elecs. Am., Inc.*, Civil Action No. 17-5757  
 6 (SRC), 2018 U.S. Dist. LEXIS 121801, at \*32 (D.N.J. July 18, 2018). The takeaway, for  
 7 purposes of the instant motion, is that the filing of a future motion to compel arbitration does  
 8 not provide any reason for the Court to deny a motion for the appointment of interim lead  
 9 counsel. This is particularly true in this case, where Plaintiff’s counsel have been contacted by  
 10 over 20,000 consumers already, and the agreed upon briefing schedule for Nintendo’s  
 11 anticipated motion provides that it will not be fully briefed until January of 2020. *See* ECF  
 12 No. 14. Regardless of whether or not the motion to compel will succeed, the formal  
 13 designation of interim lead counsel is necessary for the orderly facilitation of this matter.

14 For these reasons and those set forth in Plaintiff’s opening motion, Plaintiff respectfully  
 15 submits that his motion should be granted.

16 DATED this 3rd day of September, 2019.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED at Seattle, Washington, this 3rd day of September, 2019.

s/Kim D. Stephens  
Kim D. Stephens

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